



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13091460

[REDACTED],
Complainant,

v.

ALCOA INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b). On September 13, 2013, [REDACTED], ("Complainant") filed a Complaint with the Commission against Alcoa, Inc. ("Respondent") alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]

[REDACTED] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent failed to provide a reasonable accommodation. In order to prevail in such a case, Complainant must show (1) Complainant has a disability as the term is defined under the applicable law; (2) Respondent knew or should have known of Complainant's need for a reasonable accommodation; (3) a reasonable accommodation exists that would permit Complainant to enjoy equal benefits and privileges of employment; (4) Respondent unreasonably delayed or denied Complainant's request for a reasonable accommodation.

In this instance, there is probable cause to believe that Respondent failed to provide a reasonable accommodation. It is evident that Complainant has an impairment that substantially limits one or more major life activities. Moreover, there is sufficient evidence that Respondent was aware of Complainant's impairment and need for a reasonable accommodation. Further, an accommodation exists to remedy the situation; however, Respondent denied or unreasonably delayed Complainant's requests for said accommodation.



By way of background and at all times relevant to the Complaint, Complainant had an approved FMLA certification for a medical condition. Additionally, Complainant's supervisor, Don Hughes, knew or should have had reason to know of Complainant's health problems as evidenced by Complainant's use of 300 hours or approximately 62.5% of his intermittent FMLA leave from January 2013 to March 2013. Evidence shows that on or about March 25, 2013, Complainant requested time off, but Respondent disputes whether Complainant explicitly stated that the absence was related to his disability. Complainant asserts that he asked permission to leave work early due to a flare-up of his condition and whether he could use FMLA; meanwhile, Respondent asserts that Complainant simply asked to leave early without mentioning his condition. However, in light of the extensive amount of FMLA time used in the three prior months, it is reasonable to believe that Respondent should have interfered that the mid-day absence was related to his condition. After making the request, Complainant left work; however, Respondent issued him an "incident" under the Attendance Policy and gave him a five-day suspension for violating its attendance policy despite knowledge that Complainant successfully grieved receiving two other "incidents" in late 2012 and early 2013 related to taking time off for medical reasons. The previous grievances resulted in the voiding the incident/ reduction of the severity of the discipline rendered. Ultimately, Complainant grieved the March 25, 2013 suspension which resulted in the voiding of the March 25, 2013 suspension and the voiding/ reduction of a March 14, 2013 "incident" received for another medically related absence.

There is sufficient evidence that Respondent failed to engage into the interactive dialogue process with Complainant as required under the applicable laws. Respondent has failed to submit evidence that it even asked why Complainant needed to leave work early. Further, Complainant had FMLA time available; as such, if Respondent had engaged in the interactive process, evidence shows that Complainant would have used FMLA and avoided the disciplinary suspension. Rather, Respondent informed Complainant that the absence would constitute an incident under Respondent's progressive disciplinary policy. It is important to note that Complainant received additional "incidents" for other attendance violations after this incident, but they were voided or reduced in severity. Thus, probable cause exists to believe that Respondent's failure to accommodate Complainant resulted in an unlawful practice.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

April 15, 2014
Date

Akia A. Haynes
Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission